IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.333 OF 2003

...

Mr.Virendra Ramesh Mehta ...Petitioner

v/s.

M/s.Bharatkumar Dhaneshchandra ...Respondent

...

Mr.J.P.Sen with Mr.M.A.Shah i/b A.G.Shah for the Petitioner.

Mr.S.K.Jain i/b M.D. Mali for the Respondent.

...

CORAM: D.K.DESHMUKH, J.

DATED: 16TH FEBRUARY,2005

P.C.:

1. By this petition the Petitioner challenges the award made by the Mumbai Textile Merchants' Mahajan. The first challenge is that the arbitral tribunal had no jurisdiction to make the aware. Second challenge is that the arbitral tribunal has not given reason for the findings.

2. So far as the first ground is concerned, it is apparent from the statement of claim that the Respondent was claiming that the arbitral tribunal has jurisdiction because the Respondent is a member ofthe Mahajan and the goods were supplied by him under the invoices which contained the arbitration clause. Perusal of the reply filed by the Petitioner shows that the Petitioner raised objection to the jurisdiction of the tribunal only on the ground that the Petitioner is not a member of the Mahajan. The Petitioner in the reply did not at all deal with the

case of the Respondent that the goods were supplied under the invoices which contained the arbitration clause. The arbitral tribunal in the award has held that the goods were supplied under the invoices which contained the arbitration clause and therefore they have jurisdiction. I do not find any illegality in the finding recorded by the arbitral tribunal.

3. So far as the second ground is concerned, the arbitral tribunal has observed that the Petitioner has accepted the delivery of the goods, retained the goods and therefore the Petitioner was liable to make the payment. It was contended that the delivery of the goods was accepted by the Petitioner subject to the condition that the buyer to whom the goods were sold by the Petitioner will accept the delivery. The buyer did not accept the delivery. Therefore, the Petitioner asked the Respondent to take the goods back. The Respondent has not taken the goods back and therefore, according to the Petitioner, the Petitioner was not liable to make the payment. It is, however, pertinent to note here that if according to the Petitioner there was delay on the part of the Respondent in effecting the delivery of the goods, it

was open to the Petitioner to point out to the Respondent that as he has supplied the goods late, the Petitioner would accept the delivery subject to certain conditions. However, it appears that goods were accepted by the Petitioner on 14-8-2000 without putting any condition. The condition was put on 16-8-2001. Really speaking that condition does not make any sense. The Petitioner stated " Meanwhile, please note that in case our buyer will refuse to accept the goods, then in that event we will not able to take delivery from you." It is pertinent to note that delivery was already taken by the Petitioner from the Respondent. In the letter dated 22-8-2001 the Petitioner informed the Respondent that in the event their buyer does not accept the goods they will offer goods to other buyers and that payment of the price would be made to the Respondent after receiving payment from the buyer. But it appears that subsequently the Petitioner changed this stand and asked the Respondent to send the amount of shipment charges so that the goods could be returned to the Respondent. The Arbitral tribunal, in these circumstances, has observed that the delivery of the goods was accepted by the Petitioner without any condition and therefore the Petitioner is liable to

make the payment of the price of the goods. I find that not only the reasons have been recorded by the arbitral tribunal for recording the finding, but the reasons given by the arbitral tribunal are good reasons. It is further to be seen here that the goods were not accepted by the buyer from the Petitioner was merely claimed made by the Petitioner. There is no documentary evidence produced on record which will establish that the buyer of the Petitioner refused to accept the goods.

4. Taking overall view of the matter, therefore, in my opinion, the award made by the arbitrator which is impugned in this petition cannot be disturbed in the limited jurisdiction of this Court under Section 34 of the Arbitration & Conciliation Act. Petition, therefore, is dismissed. Petitioner is directed to pay costs of this petition to the Respondent, as incurred by the Respondent.

...